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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 McGHEE TONY DUCLOS,

12 Plaintiff,

13 v.

14 JEFF LYNCH, et al.,

15 Defendants.
16

No. 2:23-CV-1000-DMC-P

ORDER

17 Plaintiff, a prisoner proceeding pro se, brings this civil rights action pursuant to 42
18 U.S.C. § 1983. Pending before the Court is Plaintiff's original complaint, ECF No. 1.

19 The Court is required to screen complaints brought by prisoners seeking relief
20 against a governmental entity or officer or employee of a governmental entity. See 28 U.S.C.
21 § 1915A(a). This provision also applies if the plaintiff was incarcerated at the time the action was
22 initiated even if the litigant was subsequently released from custody. See Olivas v. Nevada ex rel.
23 Dep't of Corr., 856 F.3d 1281, 1282 (9th Cir. 2017). The Court must dismiss a complaint or
24 portion thereof if it: (1) is frivolous or malicious; (2) fails to state a claim upon which relief can
25 be granted; or (3) seeks monetary relief from a defendant who is immune from such relief. See
26 28 U.S.C. § 1915A(b)(1), (2). Moreover, the Federal Rules of Civil Procedure require that
27 complaints contain a “. . . short and plain statement of the claim showing that the pleader is
28 entitled to relief.” Fed. R. Civ. P. 8(a)(2). This means that claims must be stated simply,

1 concisely, and directly. See McHenry v. Renne, 84 F.3d 1172, 1177 (9th Cir. 1996) (referring to
 2 Fed. R. Civ. P. 8(e)(1)). These rules are satisfied if the complaint gives the defendant fair notice
 3 of the plaintiff's claim and the grounds upon which it rests. See Kimes v. Stone, 84 F.3d 1121,
 4 1129 (9th Cir. 1996). Because Plaintiff must allege with at least some degree of particularity
 5 overt acts by specific defendants which support the claims, vague and conclusory allegations fail
 6 to satisfy this standard. Additionally, it is impossible for the Court to conduct the screening
 7 required by law when the allegations are vague and conclusory.

8 9 **I. PLAINTIFF'S ALLEGATIONS**

10 Plaintiff McGhee Tony Duclos names as defendants: (1) Warden Jeff Lynch, (2)
 11 Correctional Officer J. Gregory, (3) Correctional Officer T. Cameron; (4) Correctional Officer T.
 12 Drake; (5) RN Steve Molina; and (6) Chief of Mental Health K. Franceschi. See ECF No. 1, pgs.
 13 1-2. Generally, Plaintiff alleges excessive force and failure to protect, both in violation of his
 14 Eighth Amendment rights.

15 In his first claim, Plaintiff asserts that Defendant Correctional Officer J. Gregory
 16 and Defendant Correctional Officer T. Cameron violated his Eighth Amendment rights by failing
 17 to properly protect Plaintiff from attempting suicide. See id. at 5. Plaintiff provides details
 18 regarding the first suicide attempt on the morning of February 19, 2023. According to Plaintiff,
 19 he struggled with suicidal ideations and attempted to make a noose around the light fixture within
 20 his cell in attempts to hang himself. See id. Plaintiff began to experience chest pains and agreed
 21 with the officers that he would give up the restraints and remove the noose from the fixture if he
 22 was provided with medical care. See id. Plaintiff was treated for his blood pressure and was then
 23 discharged. Defendant Correctional Officer J. Gregory and Defendant Correctional Officer T.
 24 Cameron escorted Plaintiff back to his unit, directing Plaintiff to sit on a golf cart at the rear of
 25 the vehicle in a single seat. See id. Plaintiff was not restrained to the single seat during his
 26 transportation. See id. Plaintiff, still suffering from suicidal ideations, saw a correctional van
 27 approaching from the right side and lunged himself from the moving golf cart in an attempt to
 28 commit suicide a second time by being ran over by the van. See id. Plaintiff sustained serious

1 shoulder injuries after falling to the gravel and rolling twice. See id. Plaintiff alleges that
2 Defendants acted with deliberate indifference to Plaintiff's suicidal state of mind by neglecting to
3 retrain Plaintiff from lunging in front of other moving vehicles. See id. at 5.

4 In his second claim, Plaintiff alleges that Defendant Correctional Officer J.
5 Gregory and Defendant Correctional Officer T. Cameron used excessive force to restrain Plaintiff
6 once he was brought back to his cell. See id. at 6. Plaintiff alleges that when he was escorted back
7 to his cell, he kneeled to have the leg-irons removed and Defendant Correctional Officer T. Drake
8 exclaimed "stop resisting." Id. Plaintiff claims that, subsequently, over ten correctional officers –
9 including Defendants Gregory, Cameron, and Drake – restrained him, kneeling him in the rib cage
10 and putting excessive pressure on the shoulder he had previously injured. See id. Plaintiff alleges
11 that this use of force was a violation of his Eighth Amendment rights because he was following
12 policy and procedure by kneeling to get leg-irons removed. See id. Plaintiff alleges that further
13 damage was caused to his right shoulder, and that he experiences chronic migraines since being
14 restrained by multiple officers. See id.

15 In his third claim for relief, Plaintiff asserts that Defendant Warden Jeff Lynch was
16 responsible for the incident that occurred on February 19, 2023, based on supervisory liability.
17 See id. at 7. Plaintiff alleges that Defendant Warden Jeff Lynch failed to adequately train custody
18 staff on the appropriation use of force and sufficient mental health crisis support. See id. Plaintiff
19 alleges that his rights were violated by Defendant Warden Jeff Lynch because he disregarded the
20 excessive risk to the health and safety of Plaintiff and other inmates by allowing the use of golf
21 carts as a means of transportation of high risk, suicidal inmates. See id.

22 Next, in his fourth claim Plaintiff alleges that the Chief of Mental Health K.
23 Franceschi violated Plaintiff's Eighth Amendment rights by failing to adequately train the mental
24 health staff on recognizing signs and symptoms associated with risk of suicide. See id. at 8.
25 Plaintiff alleges that on April 27, 2023, he spoke with Chief of Mental Health K. Franceschi
26 regarding the incident that occurred on February 19, 2023. See id. Plaintiff further alleges that the
27 Chief of Mental Health K. Franceschi was shocked Plaintiff was not immediately placed on
28 suicide watch. See id. at 8.

1 Finally, in his last claim Plaintiff alleges that the Defendants' failed to adequately
 2 protect Plaintiff from attempting suicide again by not putting Plaintiff on suicide watch. See id. at
 3 9. After multiple attempts to commit suicide on February 19, 2023, Plaintiff alleges that he was
 4 continuously cleared to return to his cell. See id. at 9. Plaintiff alleges that upon being cleared and
 5 escorted back to his cell, he attempted suicide a third time by consuming ten Tripetals. See id.
 6 Plaintiff alleges that 911 was called due to Plaintiff's unresponsiveness and rapid breathing. See
 7 id. Plaintiff further alleges that the staff on duty, Defendant RN Molina, still failed to ensure
 8 Plaintiff was admitted to a crisis bed following his third suicide attempt. See id.

10 II. DISCUSSION

11 The Court finds that Plaintiff's complaint states a cognizable Eighth Amendment
 12 claim against Defendant Molina based on alleged deliberate indifference to Plaintiff's suicidal
 13 ideation (fifth claim). In addition, the Court finds that Plaintiff's complaint states cognizable
 14 Eighth Amendment claims against Defendants Gregory, Cameron, and Drake based on alleged
 15 use of excessive force (second claim). Plaintiff has not, however alleged sufficient facts to
 16 establish the liability of the prison warden, Defendant Lynch (third claim). Nor has Plaintiff
 17 asserted sufficient facts to establish the liability of the Chief of Mental Health, K. Franceschi
 18 (fourth claim). Finally, Plaintiff has not alleged sufficient facts to show the deliberate indifference
 19 of Defendants Gregory and Cameron to support his failure-to-protect allegations (first claim).

20 A. Supervisory Liability

21 Supervisory personnel are generally not liable under § 1983 for the actions of their
 22 employees. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989) (holding that there is no
 23 respondeat superior liability under § 1983). A supervisor is only liable for the constitutional
 24 violations of subordinates if the supervisor participated in or directed the violations. See id. The
 25 Supreme Court has rejected the notion that a supervisory defendant can be liable based on
 26 knowledge and acquiescence in a subordinate's unconstitutional conduct because government
 27 officials, regardless of their title, can only be held liable under § 1983 for his or her own conduct
 28 and not the conduct of others. See Ashcroft v. Iqbal, 556 U.S. 662, 676 (2009). Supervisory

1 personnel who implement a policy so deficient that the policy itself is a repudiation of
 2 constitutional rights and the moving force behind a constitutional violation may, however, be
 3 liable even where such personnel do not overtly participate in the offensive act. See Redman v.
 4 Cnty of San Diego, 942 F.2d 1435, 1446 (9th Cir. 1991) (en banc).

5 When a defendant holds a supervisory position, the causal link between such
 6 defendant and the claimed constitutional violation must be specifically alleged. See Fayle v.
 7 Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir.
 8 1978). Vague and conclusory allegations concerning the involvement of supervisory personnel in
 9 civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th
 10 Cir. 1982). “[A] plaintiff must plead that each Government-official defendant, through the
 11 official’s own individual actions, has violated the constitution.” Iqbal, 662 U.S. at 676.

12 Here, in his third and fourth claims, Plaintiff names as defendants the prison
 13 warden, Defendant Lynch, and the chief mental health officer, K. Franceschi. Plaintiff has not,
 14 however, included in the complaint any allegations of these defendants’ personal involvement in
 15 any of the claims raised. Instead, Plaintiff alleges liability based on a theory of respondeat
 16 superior, which is not a cognizable theory in a civil rights action. Plaintiff will be provided an
 17 opportunity to amend.

18 **B. Deliberate Indifference**

19 To establish that a prison official has violated their duty to protect inmates from
 20 serious risks to their health, the prisoner must establish that prison officials were “deliberately
 21 indifferent” to serious threats to the inmate’s safety. See Farmer v. Brennan, 511 U.S. 825, 834,
 22 837 (1994). A plaintiff must show that the prison official knew of and disregarded an excessive
 23 risk to the inmate’s safety to demonstrate deliberate indifference. See id. at 837; see also
 24 Simmons v. Navajo Cty., 609 F.3d 1-11, 1017 (9th Cir. 2010); Gibson v. Cty of Washoe, Nev.,
 25 290 F.3d 1175, 1187-88 (9th Cir. 2002); Jeffers v. Gomez, 267 F.3d 895, 913 (9th Cir. 2001) (per
 26 curiam); Anderson v. Cty. of Kern, 45 F.3d 1310, 1313 (9th Cir. 1995). The official must be both
 27 aware of facts from which the inference could be drawn that a substantial risk of serious harm
 28 exists, and the official must also draw the inference. “Prison officials may not escape liability

1 because they cannot, or did not, identify the specific source of the risk; the serious threat can be
2 one to which all prisoners are exposed. See Farmer, 511 U.S. at 843.

3 Here, in his first claim, Plaintiff asserts that Defendants Gregory and Cameron
4 violated Plaintiff's Eighth Amendment rights by failing to properly protect Plaintiff from
5 attempting suicide. Plaintiff has not provided sufficient facts to indicate these individuals'
6 deliberate indifference to Plaintiff's suicidal state of mind in placing him on the back of the golf
7 cart without restraints. By the time Plaintiff had been placed on the back of the golf cart without
8 restraints, it appears that the suicide attempts earlier in the day had ended and Plaintiff had been
9 seen in the mental health clinic. Given these intervening events, and the lack of allegations
10 relating to Defendants' state of mind or knowledge of further suicidal ideation at the time Plaintiff
11 was placed on the golf cart, the Court cannot say that Plaintiff has adequately pleaded an Eighth
12 Amendment deliberate indifference claim. Plaintiff will be provided leave to amend.

13 14 **III. CONCLUSION**

15 Because it is possible that the deficiencies identified in this order may be cured by
16 amending the complaint, Plaintiff is entitled to leave to amend. See Lopez v. Smith, 203 F.3d
17 1122, 1126, 1131 (9th Cir. 2000) (en banc). Plaintiff is informed that, as a general rule, an
18 amended complaint supersedes the original complaint. See Ferdik v. Bonzelet, 963 F.2d 1258,
19 1262 (9th Cir. 1992). Therefore, if Plaintiff amends the complaint, the Court cannot refer to the
20 prior pleading in order to make Plaintiff's amended complaint complete. See Local Rule 220. An
21 amended complaint must be complete in itself without reference to any prior pleading. See id.

22 If Plaintiff chooses to amend the complaint, Plaintiff must demonstrate how the
23 conditions complained of have resulted in a deprivation of Plaintiff's constitutional rights. See
24 Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). The complaint must allege in specific terms how
25 each named defendant is involved and must set forth some affirmative link or connection between
26 each defendant's actions and the claimed deprivation. See May v. Enomoto, 633 F.2d 164, 167
27 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

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1 Because the complaint appears to otherwise state cognizable claims, if no amended
2 complaint is filed within the time allowed therefor, the Court will issue findings and
3 recommendations that the claims identified herein as defective be dismissed, as well as such
4 further orders as are necessary for service of process as to the cognizable claims.

5 Accordingly, IT IS HEREBY ORDERED that Plaintiff may file a first amended
6 complaint within 30 days of the date of service of this order.

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8 Dated: January 9, 2024



DENNIS M. COTA
UNITED STATES MAGISTRATE JUDGE